

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

THE C.H.I.L.D CENTER and
TASHA CARROLL
Respondents

Case Nos.: I-00-40354
I-00-40356

DECISION AND FINAL ORDER

I. Introduction

By Notice of Infraction (No. 00-40354) served on January 23, 2001, the Government charged the Respondents, “The C.H.I.L.D Center” and Tasha Carroll ¹ with violating 29 DCMR § 316.1, which limits the size of groups and the child-to-adult ratio for child development facilities (“CDFs”). The Notice of Infraction alleged that the violation occurred on January 4, 2001, and sought a fine of \$500.00 for the alleged violation. Respondents failed to answer or respond within twenty (20) calendar days (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715) as required under D.C. Code § 6-2712 (f) and the instructions contained on the Notice of Infraction.

¹ Respondent, Tasha Carroll, was at all relevant times the operator of Respondent, “The C.H.I.L.D. Center”, and has acted as representative for herself and “The C.H.I.L.D. Center” in this matter.

On February 23, 2001, this administrative court issued an order finding Respondents in default for failing to timely respond to Notice of Infraction (No. 00-40354), and assessed a statutory penalty in the amount of \$500.00 pursuant to D.C. Code § 6-2712 (f). Further, the default order required that the Government serve a second Notice of Infraction, as mandated by the same statutory provision.

The Government served the second Notice of Infraction (No. 00-40356) on March 2, 2001. Prior to the Government's service of the second Notice of Infraction, this administrative court received from Respondents their answer and a plea of Admit, together with a check in the amount of \$500.00. Although Respondents' answer failed to indicate a plea, by law, the tender of payment in the amount of a specified fine is deemed a plea of Admit to the charge. D.C. Code § 6-2712 (b).

On March 12, 2001, Respondents filed a submission seeking a reduction or suspension of the applicable statutory penalty for their untimely answer. In their submission, Respondents admitted that they exceeded the time permitted by law for answering the first Notice of Infraction, and expressed regret for their untimely response. They stated that their slow response was attributable, *inter alia*, to time spent "researching" the infraction before ultimately electing to acknowledge liability and pay the specified fine. The Respondents also asserted that the payment of the fine was a hardship, and that the payment of additional penalties would be a further hardship. By Order of May 2, 2001, the Government was given an opportunity to respond to these asserted facts. Because no response was received from the Government, this matter is now ripe for decision.

II. Findings of Fact

Based on Respondents' submission of March 12, 2001, the absence of any response from the Government, and the entire record in this case, this administrative court finds by a preponderance of the evidence that:

1. Respondent, "The C.H.I.L.D. Center," is a child care facility located at 300 A Street, N.E. in Washington, D.C. Respondent, Tasha Carroll, was at all relevant times the person responsible for the operation of Respondent, "The C.H.I.L.D. Center."
2. The alleged infraction occurred on January 4, 2001.
3. By their plea of Admit pursuant to D.C. Code § 6-2712 (b), Respondents have admitted to violating 29 DCMR § 316.1, by exceeding one or more limits on group size and/or child-to-adult ratio in their child development facility.
4. Respondents exceeded the statutory deadline for responding to the Notice of Infraction (No. 00-40354) by approximately twelve (12) days.
5. This administrative court's default notice relating to the Notice of Infraction (No. 00-40354) was mailed on February 23, 2001. The postmark on the envelope containing Respondents' untimely answer and plea was dated February 24, 2001. Given the proximity of these mailings, it is more likely than not that Respondents' untimely answer was spurred not by the receipt of the default notice, but instead by a good faith, albeit belated, attempt to comply with D.C. Code § 6-2712(a).

II. Conclusions of Law

1. Respondents have admitted to and are jointly and severally liable for the charged violation of 29 DCMR § 316.1 that occurred on January 4, 2001. Accordingly, Respondents are required to pay the specified fine in the amount of \$500.00. *See* 16 DCMR § 3222.1(i). This administrative court's records show that the fine has been paid in full.
2. Respondents requested a reduction or suspension of the statutory penalty for their untimely answer and the Government did not oppose this request. Respondents' March 12th submission supports a limited reduction, but not a suspension, of the statutory penalty. Respondents acknowledged responsibility and expressed contrition for failing to comply with applicable statutory timelines. The relatively limited delay of approximately twelve (12) days and this administrative court's finding of a good faith, albeit belated, attempt to comply with D.C. Code § 6-2712 support a small reduction of the penalty. *See* D. C. Code §§ 6-2703 (b)(6); 6-2712 (f); 6-2712 (a)(2); 18 U.S.C. § 3553; and U.S.S.G. § 3E1.1.
3. A suspension in this matter is not appropriate as there are no compelling circumstances to support it. Respondents' failure to timely comply, even in the absence of bad faith, is still attributable to their culpable neglect of the legal requirements stated in clear language on the Notice of Infraction form.² Equally

² The Notice of Infraction contains language stating clear instructions to the Respondents. These instructions are set forth prominently in bold typeface as follows:

WARNING: Failure to respond (see reverse) to this Notice within 15 days of the date of service will result in assessment of a penalty equal and in addition to the

important, a review of the administrative court's records reflects a substantial history of non-compliance by Respondents, consisting of fourteen (14) violations at their CDF over a period of approximately fourteen (14) months.³ This administrative court takes judicial notice of these previous adjudications of civil liability.⁴ Given Respondents' previous and substantial compliance difficulties, they should have been familiar with the requirements of D.C. Code § 6-2712 (f) and this fact, as well as the non-compliance itself, offsets much of any reduction that might otherwise have been available.⁵ Accordingly, the penalty will be reduced by \$50.00 from \$500.00 to \$450.00.

III. ORDER

Therefore, upon Respondents' answer and plea, their application for reduction or suspension of the penalty, and the entire record in this case, it is hereby this _____ day of _____, 2001:

amount of the fine. You may also be subject to other penalties and actions allowed by law including suspension and non-renewal of your license or permit, the sealing of your business, a lien being placed on your property, and attachment of your equipment.

³ See, e.g. *DOH v. C.H.I.L.D. Center.*, OAH Order Regarding Closure of Matter, Case No. I-00-40035; *DOH v. C.H.I.L.D. Center.*, OAH Clerk's Notice Regarding Closure of a Matter, Case No. I-00-40355; and *DOH v. C.H.I.L.D. Center.*, OAH Clerk's Notice Regarding Closure of a Matter, Case No. I-00-40397.

⁴ The Court may take judicial notice of its own docket records. See, e.g. F.R.E. 201. See also *Sherman v. Comm'n on Licensure*, 407 A.2d 595, 598 (D.C. 1979) (taking judicial notice of a prior guilty plea).

ORDERED, that the second Notice of Infraction No. 00-40356 is **DISMISSED** as moot;
and it is further

ORDERED, that the portion of this administrative court's order of February 23, 2001 assessing a penalty of \$500.00 for Respondents' failure to file a timely response to Notice of Infraction No. 00-40354 is hereby modified as follows:

ORDERED, that Respondents are jointly and severally liable for a total of **FOUR HUNDRED FIFTY DOLLARS (\$450.00)** and shall make payment in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of

additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Code § 6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **6/8/01**

Paul Klein
Chief Administrative Law Judge